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AFTER THE INVASION OF THE RUSSIAN
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INTERNATIONAL ENFORCEMENT AND EVOLUTION OF THE UN INTERNATIONAL LAW AFTER THE INVASION OF THE RUSSIAN FEDERATION IN UKRAINE

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Abstract: The present paper is concentrated on the events that have to do with the evolving escalation of the situation of war in Ukraine. The invasion of the Russian Federation in the Ukraine territory as well as the mechanisms of evolution of the international law are few of the main points of analysis of the present work. The history of Russia especially in the Security Council of the UN and its involvement in Ukraine as well as the international enforcement mechanisms and their general ineffectiveness, as we will see in similar topics of the past, are arguments of continuous discuss. Security Council's role as well as that of International Court of Justice, and of the International Criminal Court are arguments related to the ineffectiveness

of international law. Interesting are also the expressions of structure and practice of the UN Security Council. The step by step recommendations and especially of the positions of vote and veto in the Security Council as also the abstention of obligations are positions of discussion and a new ways of enforcement structures for the next years.

Keywords: peace and security maintenance; international law; UN Charter; veto position; Russia invasion in Ukraine; evolution of international law; international enforcement mechanism; practice of the UN Security Council; enforcement structures; abstention of obligation.

INTRODUCTION

They were closed two years from the Russian invasion in Ukraine. The calling of international law in the war in Ukraine is very significant for its evolution. It was 22 February of 2022 when president Putin invoked Art. 51 of the United Nations Charter, as a justification of the “special military operation in Ukraine”¹ (Grant, 2014; Gladstone,

¹Russia’s Vladimir Putin Recognizes Crimea as Nation, BBC NEWS (17

2022). Putin with his actions has influenced the international community. His military strategy for the invasion was achieved under the permission of international legal order and the relevant employment of several tropes.

Russia has recognised as an independent state Crimea in 2014 (Gladstone, 2022). Putin's aim was to create a new type of federation in this territory.² He made use of the internationally accepted right of self-defense in order to prevent any interference from international actors (Lukov, 2022). Perhaps his main purpose was to destroy the international legal order according to the UN rules. And we arrived to this position after the question that he carefully imposed:

“(...) when a state ignores the basic tenets of international rule of law, what can the international community do? (...”).

After the World War II, the UN has affronted territorial violations in all over the world. The UN has demonstrated

March 2014), <https://www.bbc.com/news/world-europe-26621726>
Accessed on 28 March 2025.

²Putin announces Russian annexation of four Ukrainian regions, Al Jazzeera (1st October 2022).

its continuous effort to return many territories to the *status quo ante bellum*.³ We remembered, in this regard, the violations of the six-days war, the Falklands war, the Iraq's invasion of Kuwait, the Turkish invasion in Cyprus, the Russia's annexation to Crimea and recently the Russian's invasion in Ukraine. In the last case, we noted more political and less international law's responses.

The same climate of political criticism was noted in the six-days war and in the Russian invasion in Crimea. Russia and Israel hold some parts of the lands seized (Bowen, 2017).⁴ In

³Ukraine Crisis: Timeline, BBC NEWS (13 November 2014), <https://www.bbc.com/news/world-middle-east-26248275> Accessed on 28 March 2025; Timeline: The Six Day War, NPR (4 June 2007, 9:18 AM), <https://www.npr.org/templates/story/story.php?storyId=10694216> Accessed on 28 March 2025; The Falklands War: A Chronology of Events, HIST. PRESS, <https://www.thehistorypress.co.uk/articles/the-falklands-war-a-chronology-of-events/> Accessed on 28 March 2025; Turkish Invasion of Cyprus, NEW WORLD ENCYCLOPEDIA, https://www.newworldencyclopedia.org/entry/Turkish_invasion_of_Cyprus Accessed on 28 March 2025.

⁴G.A. Res. 68/262, par. 6 (27 March 2014); UN Resolution Condemns Russia's Occupation of Crimea, AL JAZEERA (10 December 2019), <https://www.aljazeera.com/news/2019/12/10/un-resolution-condemns-russias-occupation-of-crimea> Accessed on 28 March 2025.

the Falklands war, instead, an international condemnation and the beginning of a negotiation as a peace settlement was registered.⁵

Turkey's invasion in Cyprus and Iraq's invasion in Kuwait had a unanimous condemnation by the international community. Diplomatic negotiations and economic sanctions took place after the military destroy of territories, as a result of the military interventions.⁶

All these territorial violations in many parts of the planet showed the success of a pressure demonstrated by the aggressor states. The character and the efforts of the

⁵S.C. Res. 502, par. 2 (3 April 1982) (demanding withdrawal of Argentine forces from the Falkland Islands); Falkland Islands War, ENCYCLOPEDIA BRITANNICA (19 September 2023), <https://www.britannica.com/event/Falkland-Islands-War> Accessed on 28 March 2025.

⁶S.C. Res. 353 (20 July 1974) (concerning the outbreak of violence in Cyprus and the need to restore the constitutional Republic of Cyprus); S.C. Res. 660, par. 1-2 (2 August 1990) (condemning Iraq's invasion of Kuwait and demanding withdrawal); S.C. Res. 678, 2 (29 November 1990) (authorizing use of force to implement resolution 660 and restore international peace and security); This Day In History: Iraq Invades Kuwait, HISTORY (30 July 2021), <https://www.history.com>this-day-in-history/iraq-invades-kuwait> Accessed on 28 March 2025; UNFICYP Fact Sheet, UN PEACEKEEPING.

continuous pressure applied by the aggressor states was the result of such war of aggression (Pollman, 2022).

A response to such pressures and continuous violations on territorial integrity was given by the UN Security Council and especially from its permanent members. Also, difficulties related to enforceability matters are evident in such situations of crises, according to the modern international law.

THE ANNEXATION OF CRIMEA AS A RUSSIAN INTERFERENCE

Russian Federation has a long history in territory problems. After the collapse of imperial Russia only a brief period of independence was mentioned. Most of the time a violation of territorial sovereignty was prevailed and the last act of this action was with the dissolution of the Soviet Union (USSR) in 1991.⁷

The international influence of Russian Federation was restricted due to its internal territorial tensions. As a result

⁷Ukraine, CIA: THE WORLD FACTBOOK (25 September 2023), <https://www.cia.gov/the-world-factbook/countries/ukraine/> Accessed on 28 March 2025.

of this, in 2013, the ex President of Ukraine Viktor Yanukovych approved a trade agreement with the European Union aiming to restrict and create more tension with Russia.⁸ Tension, protests and violence followed from the Russian side. Moreover, the Ukrainian government encouraged unnecessary protests.⁹ Yanukovych has sought international attention as a result of such situation. Many other Ukrainian politics held the same line of tension which finally led to Russia's invasion in Crimea in 2014.¹⁰ A small territory of the Ukrainian mainland into the Black sea was the subject of conflict between Russia and

⁸Under pressure from the Kremlin, Yanukovych undermined a trade and cooperation agreement with the European Union that the Verkhovna Rada (Ukrainian parliament) had already agreed upon. See The Maidan Protest Movement, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Ukraine/The-Maidan-protest-movement> Accessed on 28 March 2025.

⁹What Did Ukraine's Revolution in 2014 Achieve?, ECONOMIST (16 February 2022), <https://www.economist.com/the-economist-explains/2022/02/16/what-did-ukraines-revolution-in-2014-achieve> Accessed on 28 March 2025.

¹⁰History of Crimea, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/place/Crimea/History> Accessed on 28 March 2025.

Ukraine.¹¹ Crimea from 1991 was ceded to Ukraine and has maintained an autonomous status under soviet rules.¹²

Previous agreements and the newly-minted Russian federation respect Ukraine's borders. The interests of Russia in the region continued as a political challenge.¹³ In reality, the maintenance of Ukraine's territory sovereignty was complicated by the predominance of Crimea's Russian population (Pifer, 2014; Shreck, 2019).

On 22 February of 2014, after the ousting of the Ukrainian president Yanukovych, anti-separatism and pro-Russian demonstrations took place. Five days later, Russian troops and special forces seized strategic sites across Crimea. The

¹¹Memorandum on Security Assurances in Connection with Ukraine's Accession to the Treaty on the Non-Proliferation of Nuclear Weapons, 5 December 1994, 3007 U.N.T.S. 167; Treaty on Friendship, Cooperation, and Partnership, Russ.-Ukr., 31 May 1997, 3007 U.N.T.S. 117.

¹²About Number and Composition Population of Autonomous Republic of Crimea, By Data All-Ukrainian Population Census, STATE STATISTICS COMMITTEE OF UKRAINE, <http://2001.ukrcensus.gov.ua/eng/results/general/nationality/Crimea/> Accessed on 28 March 2025.

¹³U.S. Army Special Operations Command, “Little Green Men”: A Primer on MODERN RUSSIAN UNCONVENTIONAL WARFARE, UKRAINE 2013-2014 30-31 (2015).

“little green men” and Putin’s direct orders led to the annexation of the Crimean territory (Geiss, 2015).

The Russian troops were deployed to “stand behind Crimea’s self-defense forces”, according to Putin. In other words, this intervention was necessary for Putin and has as a main point to facilitate a peaceful referendum and of course to help the Crimean people.¹⁴ This referendum held by the Supreme National Council of the Autonomous Republic of Crimea on 16 March 2014. As a result of this, the Crimea’s authorities declared independence and requested to join Russia (Mälksoo, 2019).¹⁵

¹⁴Press Release, President of Russia, Executive Order on Recognising Republic of Crimea (17 March 2014, 10:30 PM), <http://en.kremlin.ru/events/president/news/20596> Accessed on 28 March 2025; Ukraine Crisis: Putin Signs Russia-Crimea Treaty, BBC NEWS (18 March 2014), <https://www.bbc.com/news/world-europe-26630062> Accessed on 28 March 2025.

¹⁵U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., Ukraine 2019 Human Rights Report 58-59 (2019), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/ukraine/crimea/> Accessed on 28 March 2025: “(...) March 2014 Russia announced the peninsula had become part of the Russian Federation following a sham referendum that violated Ukraine’s constitution (...). General Assembly Resolution 68/262, 6 (27 March 2014) (calling upon states “not to recognize any alteration of

After a few days Russia recognized Crimea's independence and incorporated the new coined Republic of Crimea and Sevastopol into the Russian Federation (Marxsen, 2016; Åslund, Snegovaya, 2021). International community has totally condemned Kremlin's actions as violent and invasive and of course refused to recognize any change of the legal status of Crimea imposing limited effective sanctions (Kupfer, De Waal, 2014).

THE BASIS OF AN INTERNATIONAL CONFLICT

The “novel” about national protection by the Russians was also repeated in the Donbass region of Ukraine. A zone that invoked and annexed Putin with the same way like Crimea (Saul, 2014). A genocide allegation was continued also in this case.¹⁶ The methods used were based to legitimize the invasion in Ukraine like a playbook.

The invasion in Ukraine achieved after allegations of

the status of the Autonomous Republic of Crimea”); G.A. Res. 74/168, par. 11 (18 December 2019).

¹⁶Press Release, Security Council, So-Called Referenda During Armed Conflict in Ukraine ‘Illegal,’ Not Expression of Popular Will, United Nations Political Affairs Chief Tells Security Council, U.N. Press Release SC/15039 (27 September 2022).

violence and genocide against ethnic Russians justifying thus the Russian military intervention. This intervention was like an interference in a boundary territory.

A desire for autonomy and self-determination in the regions of Luhansk and Donetsk was demonstrated after the relevant referendum held in Crimea (Funke, 2022).

The new minted Luhansk and Donetsk People's Republics were recognized and joined to Russian Federation.¹⁷ Therefore, the Crimea, Luhansk and Donetsk regions created different issues to Russia Federation. This situation was also aggravated by the proliferation of social media, that had as a main effort to broaden public access to information and challenge false allegations promoted by Russia in these regions. Also, Russia has experienced a resistance from the representatives of UN in the region and not only.

The political situation in Ukraine has changed from 2014 to

¹⁷Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, U.N. Press Release SC/14808 (25 February 2022): “(...) U.K.’s representative to the U.N. called Russia’s claims of self-defense “absurd,” and the Ukrainian representative informed his Russian counterpart, “Your words have less value than a hole in a New York pretzel (...).”

now. After the annexation of Crimea in Russia political events followed shifting further the political landscape of Ukraine (McDonald, 2022, Mitzer, Janovsky, 2022, Jones, 2022).

Ukraine continued its massive reform towards the western democratic states and ideals and especially considering European Union a political inspiration of democratic values. As a result, it has decided to increase its military and trade cooperation with Europe and United States.¹⁸

Notwithstanding, a great bloodshed during and after the Russian invasion in Crimea took place in the Ukrainian region (Kupfer, De Waal, 2014). In fact, the bloodshed continued when the Russian-backed separatists took the control of the southeastern Ukrainian regions of Donetsk and Luhansk, known collectively as Donbas, for almost eight years.

Only in 2022, the Russian Federation recognized them, paving the way of the Russian troops in the rebel-controlled areas that occupy about a third of Donetsk and

¹⁸Counter offensive Against Russia in Maps-Latest Updates, Financial Times (20 November 2023), <https://www.ft.com/content/4351d5b0-0888-4b47-9368-6bc4dfbccbf5> Accessed on 28 March 2025.

Luhansk (Quinn-Judge, Zarakhovich, 2004).

THE “HISTORY” OF ALLEGATION OF GENOCIDE

It was from Ukraine’s orange revolution that we speak about allegations of genocide in Ukraine territory. Especially after the 2004 presidential election in Ukraine allegations of genocide were noted.¹⁹

Following Yushchenko’s victory in 2004 many online groups in Ukraine warning for a genocide crimes perpetuated by the Ukrainian government against the Russian Ukrainians as well as mentioning fears that the Russian language would disappear in official operations (Dickinson, 2020). The allegations of genocide continued also after Donetsk separation.

Many Russian politicians occurred events in Crimea during Russian annexation (Fisher, 2022). The problematic relations of Russia and Ukraine was an old history in the

¹⁹On the Publication of the Results of the Repealed Voting on 26 December 2004 for the Elections of the President of Ukraine, CENT. ELECTION COMM’N (10 January 2005), http://www.cvk.gov.ua/postanovy/2005/p0015_2005.htm Accessed on 28 March 2025. (Ukrainian Central Election Commission’s publication of 26 December run off).

region under exam.²⁰

Putin continued to support the question of genocide crimes and especially its intractable relation with the conflict in course.²¹

The allegations of genocide was the basis of the application of the International Court of Justice (ICJ) under the Convention on the Prevention and Punishment of the Crime of Genocide (Liakopoulos, 2020a).²² According to the

²⁰The Convention on the Prevention and Punishment of the Crime of Genocide, popularly referred to as the Genocide Convention, was the first human rights instrument adopted by the U.N.'s General Assembly in the wake of World War II. See Ratification of the Genocide Convention, U.N. OFFICE GENOCIDE PREVENTION & RESPONSIBILITY TO PROTECT, <https://www.un.org/en/genocideprevention/genocide-convention.shtml>

Accessed on 28 March 2025; See also Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukraine v. Russia), Application Instituting Proceedings, (26 February 2022), <https://www.icj-cij.org/en/case/182> Accessed on 28 March 2025.

²¹Article VIII of Genocide convention provides that “(...) any Contracting Party may call upon the competent organs of the United Nations to take such action under the Charter of the United Nations as they consider appropriate for the prevention and suppression of acts of genocide (...)” Convention on the Prevention and Punishment of the Crime of Genocide, art. 8, 9 December 1948, S. Exec. Doc. O, 81-1 (1949), 78 U.N.T.S. 277.

²²See Par. 6 of the Convention on the Prevention and Punishment of the

Convention²³ and especially under the jurisdiction of article XI it was affirmed that:

“(...) relating to the interpretation, application or fulfillment of the Convention should be submitted to the ICJ²⁴ (...) allows the international community to directly address Russia’s allegations of genocide through the ICJ (...) Ukraine has not alleged that Russia is pursuing a policy of genocide in Ukraine. Ukraine’s predominant argument is that Russia has misinterpreted and abused the Genocide Convention to provide a pretext for its invasion in Ukraine (...)”.²⁵

Crime of Genocide, art. 9, 9 December 1948, 102 Stat. 3045, 78 U.N.T.S. 277.

²³Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Memorial of Ukraine, (1 July 2023), <https://www.icj-cij.org/en/case/182> Accessed on 28 March 2025.

²⁴Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukraine v. Russia), Document from the Russian Federation Setting Out Its Position Regarding Alleged “Lack of Jurisdiction” of the Court in the Case, parr. 2-3 (7 March 2022), <https://www.icj-cij.org/case/182/other-documents> Accessed on 28 March 2025.

²⁵16 March 2022, the I.C.J. mandated that the Russian Federation must “suspend [its] military operations.” Allegations of Genocide Under Convention on Prevention and Punishment of Crime of Genocide (Ukr. v. Russ.), Order of Provisional Measures, par. 86 (16 March 2022),

Despite the urgent process of application of Ukraine in ICJ the Russian Federation did not participate.²⁶ The non-responsiveness of the Russian Federation led to provisional measures application by the ICJ.²⁷ Ukraine submitted a Memorial without mentioning of genocide allegations to

<https://www.icj-cij.org/en/case/182> Accessed on 28 March 2025. Despite the binding nature of this measure, Russia has continued its operations to date.

²⁶Press Release, Ministry of Foreign Affairs of Ukraine, Statement of the MFA of Ukraine on the Filing of its Memorial in the Case Against the Russian Federation in the International Court of Justice Under the Genocide Convention (1 July 2022, 6:30 PM), <https://mfa.gov.ua/en/news/zayava-mzs-ukrayini-shchodo-podachi-memorandumu-u-spravi-proti-rosijskoyi-federaciyi-v-mizhnarodnomu-sudi-oon-zakonvenciyeyu-pro-zapobigannya-zlochinu-genociduta-pokarannya-za-nogo> Accessed on 28 March 2025; Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.), Order Fixing Memorial and Counter-Memorial Timeline, (23 March 2022), <https://www.icj-cij.org/en/case/182> Accessed on 28 March 2025.

²⁷23 March 2022 Order, op. cit. Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.), Order Fixing Timeline for Response to Preliminary Objections, (7 October 2022), <https://www.icj-cij.org/en/case/182> Accessed on 28 March 2025.

the ICJ on 23 September of 2022.²⁸ The Russian Federation took in consideration the counter memorial of 23 March 2023.²⁹ In the Counter-Memorial, the Russian Federation has not accepted the jurisdiction of the Court as a result of the admissibility of Ukraine application by it.³⁰ The public

²⁸See 5 October 2023 Order, op. cit., Press Release, I.C.J., The Court to Hold Public Hearings on the Preliminary Objections Raised by the Russian Federation from 18 Monday to Wednesday 27 September 2023 (22 August 2023), <https://www.icj-cij.org/case/182> Accessed on 28 March 2025.

²⁹See Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. V. Russ), Judgement on Preliminary Objections (2 February 2024), <https://www.icj-cij.org/sites/default/files/case-related/182/182-20240202-jud-01-00-en.pdf> Accessed on 28 March 2025.

³⁰Application of International Convention for Suppression of Financing of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.), Application Instituting Proceedings, (16 January 2017), <https://www.icj-cij.org/sites/default/files/case-related/166/166-20191108-JUD-01-00-EN.pdf> Accessed on 28 March 2025; Application of International Convention for Suppression of Financing of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukraine v. Russia), Judgment on Preliminary Objections, (8 November 2019), <https://www.icj-cij.org/sites/default/files/case-related/166/166-20191108-JUD-00-EN.pdf> Accessed on 28 March 2025; Press Release, I.C.J.,

hearings regarding the preliminary objections were held from 18 to 27 September 2023.³¹ The Court with its judgement on February 2024 has accepted the jurisdiction and the truth of Russia's claims of genocide.³²

The jurisdiction is based on Russia's permission to use or abuse of genocide allegations and to keeping international obligations.³³ The Court rejected Ukraine's request that

Conclusion of Public Hearings on Application of International Convention for the Suppression of Financing of Terrorism and of International Convention on Elimination of All Forms of Racial Discrimination (Ukr. v. Russ.) (14 June 2023), <https://www.icj-cij.org/en/case/166> Accessed on 28 March 2025.

³¹Press Release, U.N. Office of High Commissioner for Human Rights, Commission of Inquiry on Ukraine to Conduct First Mission to the Country (3 June 2022), <https://www.ohchr.org/en/press-releases/2022/06/commission-inquiry-ukraine-conduct-first-mission-country> Accessed on 28 March 2025.

³²Report of the Independent International Commission of Inquiry on Ukraine, A/77/533 (Oct. 18, 2022); Commission of Inquiry on Ukraine to Conduct First Mission to the Country, op. cit.

³³See Press Release, U.N. Off. High Comm'r Hum. Rts., Commission of Inquiry on Ukraine to Conduct Mission to the Country (24 August 2023), <https://www.ohchr.org/en/press-releases/2023/08/commission-inquiry-ukraine-conduct-mission-country> Accessed on 28 March 2025; Press Release, U.N. Office of High Commissioner of Human Rights, UN

Russia's use of force and annexation of Donetsk and Luhansk was the result of violation of the genocide convention (Liakopoulos, 2024).³⁴

The Court limited its search to Russian's allegations of genocide and not to Russian's false accusations and to

Commission of Inquiry on Ukraine Finds Continued Systematic and Widespread Use of Torture and Indiscriminate Attacks Harming Civilians (25 September 2023),

<https://www.ohchr.org/en/press-releases/2023/09/un-commission-inquiry-ukraine-finds-continued-systematic-and-widespreaduse> Accessed on 28 March 2025; Press Release, U.N. Office of High Commissioner for Human Rights, UN Commission of Inquiry on Ukraine Finds Continued War Crimes and Human Rights Violations Gravely Impacting Civilians (20 October 2023), <https://www.ohchr.org/en/press-releases/2023/10/un-commission-inquiry-ukraine-finds-continued-war-crimes-and-human-rights> Accessed on 28 March 2025; Independent International Commission of Inquiry on Ukraine, Office of High Commissioner for Human Rights, <https://www.ohchr.org/en/hr-bodies/hrc/iicihr-ukraine/index> Accessed on 28 March 2025.

³⁴ICC, Situation in Ukraine, INT'L CRIM. CT., <https://www.icc-cpi.int/ukraine> Accessed on 28 March 2025; ICC Prosecutor Karim A.A. Khan QC Announces Deployment of Forensics and Investigative Team to Ukraine, Welcomes Strong Cooperation with the Government of the Netherlands, ICC, (17 May 2022), <https://www.icc-cpi.int/news/icc-prosecutor-karim-aa-khan-qc-announces-deployment->

military operations as not supported by international law rules. The Genocide Convention is limited to questions of genocide and not to the use of force or to other legal issues. After many years the Court has arrived to a conclusion giving an opportunity to Russia's genocide allegations to exculpate Ukraine.

WHAT IS THE ROLE OF THE SECURITY COUNCIL? THE VETO POSITION AND THE OBLIGATION OF ABSTENTION
The Office of the High Commissioner on Human Rights has initiated an independent mission concerning the allegations against Ukraine after the beginning of the invasion (Sly, 2023).³⁵ Its Independent International

[forensics-and-investigative-team-ukraine](#) Accessed on 28 March 2025.

³⁵Ukraine War Crimes Investigations and Prosecutions, AM. BAR ASSOC. (24 May 2023),

https://www.americanbar.org/advocacy/governmental_legislative_work/publications/washingtonletter/may-23-wl/ukraine-0523wl/ Accessed on 28 March 2025; Ukraine's Quest for Justice: A Conversation with Prosecutor General Andriy Kostin, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE (26 September 2023), <https://carnegieendowment.org/2023/09/26/ukraine-s-quest-for-justiceconversation-with-prosecutor-general-andriy-kostin-event-8161>

Accessed on 28 March 2025.

Commission of Inquiry in Ukraine territory has prepared a final first report. The report was published on 18 October 2022 declaring a variety of war crimes, crimes against humanity, and other violations of international law that had been committed in the Ukrainian territory by armed Russian forces (Bellinger, 2022).

The Commission continues its work of investigation as an independent prosecutor reaffirming the occurrence for a Commission for war crimes and crimes against humanity in the territory of Ukraine.³⁶ This work, was continued, by a group of thirty-nine state parties and the help of the Office of the Prosecutor for the International Criminal Court (ICC) with an investigation of the situation in Ukraine, on 2 March 2022.³⁷

The investigation under the ICC has proceeded with two arrest warrants: for the president Vladimir Putin and for the Russian Commissioner for Children's Rights Ms Maria

³⁶See U.N. Charter arts. 2, 39.

³⁷General Assembly, Res. A/ES-11/L.1 (1 March 2022), https://www.eeas.europa.eu/sites/default/files/a_es-11_1.1_e.pdf

Accessed on 28 March 2025; G.A. Res. A/ES-11/L.7 (16 February 2023), <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N23/048/58/PDF/N2304858.pdf> Accessed on 28 March 2025.

Lvova- Belova (Quell, 2022; Thomson, Scarcella, 2022).³⁸ The warrants were based on war crimes, deportation and transfer of population.³⁹

Ukraine's Office of the Prosecutor General continued the relevant investigations for war crimes. It were noticed more than 100,000 crimes counting the relevant documentation of the Office after the invasion.⁴⁰

Formal investigations beginning for the conflict by the Security Council, claiming for their approval Art. 51 of self-defense rules (Liakopoulos, 2020a).⁴¹

³⁸The Independent International Commission of Inquiry on Ukraine has already identified crimes including indiscriminate attacks with explosive weapons, summary executions, unlawful confinement, rape, torture, and still more. See Report of the Independent International Commission of Inquiry on Ukraine, op. cit.

³⁹<https://www.icj-cij.org/history> Accessed on 28 March 2025.

⁴⁰See Application by Ukraine, *supra* note 50 (statement of Minister of Foreign Affairs of Ukraine Dmytro Kuleba) (“(...) concerns the falsity of allegations of genocide, and unlawful measures that have been undertaken on the basis of such false allegations (...)”).

⁴¹The ICJ. has adjudicated only three previous inter-state cases under the Genocide Convention and only two of those were on the merits. In neither of the cases reaching the merits did the ICJ. determine that the nation in question was responsible for genocide. See generally Application of the

A clear violation of the UN Charter by the Russian Federation on the Ukrainian territorial integrity was accepted, as an international definition of an act of aggression. Russian's invasion was condemned as an act of international aggression from the international community and based on international rules.⁴²

Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia), Judgment, 2015 ICJ. 3, parr. 401, 440-42, 499, 507, 515 (3 February); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Serbia & Montenegro), Judgment, 2007 ICJ. 43, parr. 276-77, 376, 379, 413 (26 February); Application for Revision of the Judgment of 11 July 1996 in the Case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia & Herzegovina v. Yugoslavia), Preliminary Objections (Yugoslavia v. Bosnia & Herzegovina), Judgment, 2003 ICJ, 7 (3 February).

⁴²Article 2 of the Genocide Convention states: In the present Convention, genocide means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnic, racial or religious group, as such: (a) Killing members of the group; (b) Causing serious bodily or mental harm to members of the group; (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring children of the group to another group.

The investigations continued and the conduct of Russian's challenge did not prove the existence of a crime based on standards and on the enforcement mechanism, that was applied with effective mode. The appeal of UN Security Council was against Russia, i.e. against a permanent member of the Council.

The veto in the UN bodies was exercised more than 270 times until now.⁴³ Such a mechanism it was used mainly from Russia and the United States.⁴⁴

The maintenance of peace and security, is not in line, in international level, with the practice of veto. The Russian's veto in 1980 against the Mujahadeen, affirmed the sovereign of Afghanistan, that is concluded in an armed intervention.⁴⁵ In Nicaragua case, the US veto was to abide

⁴³See Security Council Meeting Records, U.N. Doc. S/PV.2704, at 58 (31 July 1986).

⁴⁴Security Council Meeting Records, U.N. Doc. S/PV.2850, at 34 (17 February 1989); S/PV. 2867, at 31 (9 June 1989); S/PV.3756, at 6 (21 March 1997); S/PV.4438, at 30 (14-15 December 2001); S/PV.4934, at 3 (25 March 2004); S/PV.5565, at 3 (11 November 2006); S/PV.8274, at 4 (1 June 2018).

⁴⁵Security Council Meeting Records, U.N. Doc. S/PV.9499, at 3-4 (8 December 2023); History of the Question of Palestine, UNITED NATIONS, <https://www.un.org/unispal/history/> Accessed on 28 March 2025.

the ICJ's decision (Liakopoulos, 2020a), reaffirming the position of Nicaragua rights to sovereignty.⁴⁶ As far as concerns the Palestinian question, the US voted measures for Israel and activities for the occupied Palestinian territories.⁴⁷ The Palestinian question remained for many years and continuous to be a humanitarian crisis, which has characterized by a violence and violated rights in the relevant territory zones. These examples demonstrate, that the veto power forced Security Council to freely exercise its work.⁴⁸

In the same spirit, was the 17 times veto used by Russia to

⁴⁶The Security Council's mission is to "maintain or restore international peace and security" and its repeated failures to address humanitarian crises or call for an end to armed conflict are clear failures to adhere to its mission. See U.N. Charter art. 39.

⁴⁷Syria, AMNESTY INTERNATIONAL, <https://www.amnesty.org/en/location/middle-east-and-north-africa/syria/report-syria/> Accessed on 28 March 2025.

⁴⁸Security Council Meeting Records, U.N. Doc. S/PV.9143, at 3-4 (30 September 2022), S/PV.8979, at 6, 8-9 (25 February 2022). Russia also vetoed a measure aimed at its actions during the invasion and annexation of Crimea in 2014. See Security Council Meeting Records, U.N. Doc. S/PV.7138, at 2-3 (15 March 2014).

protect Syrian people since 2011 (Pellet, 2014).⁴⁹ UN relevant reports promoted, with the aid of Russia, international peace and security in the territory. Russia voted eighteen resolutions addressing its help in Syria zone.⁵⁰ Following the same strategy Russia has protected itself from its illegal invasion in Ukraine.⁵¹

Another argument is if the UN mechanism contains limiting rules to states demonstrating an aggressive behaviour towards other states. Of course, it does contain in the UN Charter but these rules are not used in practice. One of these is the abstention obligation. A position that finds territory in Art. 27, par. 3 and Art. 52, par. 3 of Chapter VI of the UN Charter.⁵²

The abstention obligation is an enforced position for a

⁴⁹U.N. Charter art. 27, par. 3.

⁵⁰U.N. Charter art. 27, par. 3.

⁵¹Hindsight: Obligatory Abstentions, SECURITY COUNCIL REPORT (31 March 2014):

https://www.securitycouncilreport.org/monthly-forecast/2014-04/in_hindsight_obligatory_abstentions.php Accessed on 28 March 2025.

⁵²The last nation to explicitly raise the issue of the abstention obligation was Libya in 2000. See Security Council Meeting Records, U.N. Doc. S/PV.4128, at 30 (17 April 2000).

permanent and non-permanent Security Council members.⁵³ The only problem is the failure for the permanent members to respect the power of the choice to vote or the relevant position of veto.

The abuse of veto in the UN Security Council in the international order seems to condemn a system of impunity for an international power structure and for true effectiveness.

THE ROLE AND POSITION OF THE INTERNATIONAL COURT OF JUSTICE

The ICJ as an international forum for pacific settlement of international disputes⁵⁴ was based on the genocide convention to settle the dispute against Russia.⁵⁵ The evidence of Ukrainian genocide against Russians in eastern

⁵³UN General Assembly Mandates Meeting in Wake of any Security Council Veto, U.N. NEWS (26 April 2022), <https://news.un.org/en/story/2022/04/1116982> Accessed on 28 March 2025.

⁵⁴See Bosnia & Herzegovina v. Serbia & Montenegro, Judgment, 2007 ICJ. 43, parr. 413-15.

⁵⁵ICTR in Brief, U.N. INT'L RESIDUAL MECHANISM FOR CRIM. TRIBUNALS, <https://unictr.irmct.org/en/tribunal> Accessed on 28 March 2025.

part of territory in Ukraine was a point of analysis to define the genocide according to some elements: -actions that threaten and violate the rights of target groups; -the definition of groups; -the intent to destroy.⁵⁶

The elements used were taken by the previous cases regarding Yugoslavia, Serbia and Montenegro. Most of the times, the Court came to the same conclusions concerning a state responsible for genocide against another one (Bondarev, 2022).

In the case under exam, the elements of genocide created⁵⁷ a substantial evidentiary burden for a jurisdiction on genocide. The allegations against Ukraine were not supported by solid findings of genocide. It was, according to the preliminary objections of the ICJ, the Russian Federation, that aiming to support such allegations. The general events of a political and civil nature used by Russia

⁵⁶See Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukr. v. Russ.), Preliminary Objections of the Russian Federation, (1 October 2022) [hereinafter Russia's Preliminary Objections], <https://www.icj-cij.org/sites/default/files/case-related/182/182-20221003-wri-01-00-en.pdf> Accessed on 28 March 2025.

⁵⁷U.N. Charter art. 51.

were not a genocide prove.⁵⁸

The ICJ refused Ukraine's allegations permitting, therefore, a record regarding a collective self-defense claims for Russia (Wicks, 2023).

Mainly, Russia was based on disinformation, on preliminary objections cited on Art. 51 of the UN Charter (Pellet, 2014) and on collective self-defense claims. Its claims have concerned the independent regions of Donetsk and Luhansk.

Especially, it has requested a military support in these regions covered from a UN Charter declaration permitting such "special military operation" (Leeson, 2022). In this regard, the ICJ has ordered Russia to not continue any more the military invasion.

A proceeding against Russia has to produce substantive effects. Such a decision was reached by the ICJ despite the lack of its coercive power.

The ICJ through the provisional measures ask to Russia to suspend combat operations. Despite all these measures, Russian invasion continuous without stop until now. That means a weaknesses of the ICJ to hold a coercive power and

⁵⁸ICJ, <https://www.icj-cij.org/how-the-court-works> Accessed on 28 March 2025.

to comply its judgments.⁵⁹ When states failed to conform with the rules of the ICJ this demonstrates that the Court has not a “power” to enforce measures against a state, that violates many international rules. Within this context, the UN Security Council could not have the power to enforce ICJ’s decision.

The ICJ failed to block Russian’s false genocide allegations and mainly to stop and end the military intervention in Ukraine. Of course, this was normal to happen because Russia was a permanent member of the Security Council. This means that Russia was not obliged to adopt such coercive measures and as a consequence ICJ’s attempt was only a waste of time (Jackson, Waterhouse, 2022).

OTHER DOMESTIC PROSECUTIONS

Crimes against humanity, war crimes, acts of aggression are crimes codified by the Ukrainian law. Ukrainian courts have many indictments and convictions the last sixty years on these matters (Sly, 2023).⁶⁰

⁵⁹Criminal Code of Ukraine, arts. 437 (planning, preparation and waging of an aggressive war), 438 (violation of the rules of warfare), 442 (genocide).

⁶⁰Kyiv Says More Than 50 Russian Soldiers Have Been Convicted Since

More than 100,000 war crimes according to the Ukrainian General Prosecutor Andriy Kostin were claimed and documented. Therefore, the volume of cases, that occupy the Ukrainian justice system, as well as the control of alleged perpetrators, were not issued. The majority of cases that have to do with war crimes allegations against Ukraine have been tried *in absentia*, demonstrating the failure of the Ukrainian criminal system. Few soldiers indicted for war crimes against Ukraine. The proceedings under the status of "*in absentia*" continued. The immense overload indicated, that domestic prosecutions are a continuous basis of fighting in the territory.

The domestic investigations and the documentation and vindication of war crimes have not limit Ukrainian's coercive power to make clear, that the existence of an international conflict under aggression requires an international solution according to international rules.

Russia's Full Scale Invasion, RADIOFREEEUROPE (16 July 2023),
<https://www.rferl.org/a/ukraine-russian-soldiers-convicted-war-crimes/32505625.html> Accessed on 28 March 2025.

THE POSITION OF THE INTERNATIONAL CRIMINAL COURT

First of all we should say that ICC deals only with cases of individuals and not of states. The ICC has also the faculty to prosecute war crimes, crimes against war, against humanity, genocide and acts of aggression (Kolliopoulos, 2024). Thus, the allegations of genocide were unlikely to be examined and found by the Court. However, after the two arrest warrants, the ICC investigation in Ukraine could produce indictments for war crimes and crimes against humanity.

The ICC has no force to cooperate with states to acquire a control relevant of the status of offenders. The ICC cannot judge *in absentia*, according to Art. 63 of the ICC Statute. In the Ukrainian case the state parties to the ICC are obligated to cooperate with it. Therefore, Russia is not a state party of the ICC (Machuk, Wanigasuriya, 2022).

The Statute of the ICC allows also non state parties to cooperate, after invitation, and collaborate with the investigations. After Russian invasion in Ukraine such involvement and cooperation was unlikely. The ICC can prosecute individuals for war crimes and aggression as well

as become the basis of diplomatic cooperation and discussion, with Russia in this case.

All these crimes in the modern world are the basis for the evolution of international law, especially, the aggressive crime. A crime as a basis of preparation, initiation or execution by person/s, who exercise military and political actions against a state as well as an act of aggression, that constitutes a violation of the UN Charter. The crime of aggression and the relevant prosecution is the basis also of many unjust wars.

The aggression against Ukraine as well as Russian's immunity of prosecution for the crime is part of the ICC's jurisdiction. ICC's jurisdiction in the territory is limited. International courts can prosecute only heads of state.⁶¹

The only exception to the jurisdictional limitations of crime

⁶¹Case Concerning the Arrest Warrant of 11 April 2000 (DRC v. Belgium), Judgment, (14 February 2002). While recognized as an outgrowth of state immunity, it was considered and accepted by the I.C.J. in its judgment in the Case Concerning the Arrest Warrant of 11 April 2000 (DRC v. Belgium). See *id.* In that case, the I.C.J. held that heads of state cannot be prosecuted in another country for their crimes (effectively limiting Belgium's attempts to use universal jurisdiction), but that they can be prosecuted before certain international tribunals.

of aggression to the Court is Chapter VII of the UN Charter (Hathaway, 2022).

WHAT ARE THE NEW STEPS TO FOLLOW?

The international community cannot tolerate the continuous situations of violence of destruction of human rights as well as a system that supports national sovereignty and impunity. The nature of Russia's violations make evident, that international law cannot obstacle its intervention as well as its continuous interest in the Ukraine territory.

The main object is to punish Russian aggression. Only a change in international procedure can enforce the international legal order to achieve such an object. The amendments that have already concluded to the international legal system are not capable to obtain such an object, especially within the Charter of the UN and/or through the UN Security Council.

We should mention that the obligation of abstention it must be written. The limit of the abuses of the veto power has arisen in the Security Council.

The vetoes used in prohibited situations cannot deal with

the coercive measures, that are available in Chapter VII of the UN Charter.⁶² Of course, the main point of difficulty is to enforce a relevant obligation that largely ignore most of the UN history.

Many times the abstention obligation is ignored. The veto position is based and exercised from national self-interest objections (Chappell, Svoboda, 2022). This situation not explain, however, that the permanent members fail to demand abstention when they are obligated. As an explanation of this, is that the permanent members of the Security Council are unwilling to open and follow abstention requirements due to their voting power. A position, that defeats the efficacy of the international system.⁶³ In addition to this, the abstention obligation has not a formal action to abrogate or remove these positions. This also means, that the provisions of the UN Charter had no change the hard law.

⁶²Procedural Vote, SECURITY COUNCIL REPORT (23 November 2020), <https://www.securitycouncilreport.org/un-security-council-working-methods/procedural-vote.php> Accessed on 28 March 2025.

⁶³There also exist further efforts to restrict the use of vetoes in other scenarios, especially in the face of atrocity crimes.

The abstention obligation has created issues in time.⁶⁴ The enforcement force of the Security Council is a recommended step to resolve such issues. In our case, it was the General Assembly that from April 2022 voted and required by its members to explain the use of the veto. This means that any member of the Security Council can use the vote in a procedural way and not as an action assumed by the Security Council limited by definite procedural position. The procedural vote of the abstention obligation has created many discussions especially from the violations of Russia, that provided for the cause to support the practice of abstentions.⁶⁵

The enforcement of abstention obligation in practice means also sanctions against non-compliant states (Liakopoulos, 2020b). Such sanctions can necessarily be voluntary limiting the pressure that necessarily force states to respect the abstention obligation.

⁶⁴U.N. Charter art. 27, par. 3.

⁶⁵Armed forces for the U.N. are Nepal (6,247), Bangladesh (6,197), Nepal (6,299), and India (6,073); the P5 currently contribute as follows: China at 2,267, France at 587, the U.K. at 282, Russia at 88, and the U.S. at 35. See also Uniformed Personnel Contributing Countries by Ranking, U.N. PEACEKEEPING 1-3 (30 November 2023).

The resolution of the General Assembly was dedicated to the uniting of peace. It was adopted in 1950 with the scope to act and face atrocity crimes when the Security Council and/or a veto from the permanent members are unable to do this.⁶⁶ The Uniting for peace resolution provide for the veto mechanism to the members of the Security Council. The abstention obligation is presented also as a definitional issue to the UN determining the moment that abstention is required.⁶⁷

This resolution had as a conclusion the better function of the Security Council powers.⁶⁸ This approach is also shared

⁶⁶Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977, 1125 U.N.T.S.; Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II), 8 June 1977, 1125 U.N.T.S. 609.

⁶⁷U.N. Charter arts. 43-44.

⁶⁸Security Council Meeting Records, U.N. Doc. S/PV.7138 (15 March 2014) (Russia vetoes action by the Security Council regarding Crimea); Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, U.N. Press Release SC/14808 (25 February 2022) (Russia vetoes action by the Security Council condemning the invasion of Ukraine).

by the international community.

The steps to restrict the abuses of the veto power by the permanent members of the Security Council are concentrated on the abstention obligation and the relevant provisions of the UN Charter. The abstention obligation is not sufficient to block the ability of the Security Council and its continuous work in evolution on the matter under examination.

Another recommended step is the expansion of the abstention obligation. More specifically, the abstention obligation, as an enforcement of capacity of the international system, can be expanded. The abstention obligation requires members to abstain voting regarding disputes that have to do with Chapter VI and Art. 52, par. 3 of the UN Charter (Pellet, 2014).⁶⁹

The pacific settlements and the limitations of enforcement actions undertaken under the Security Council are responsible for the veto mechanism used by the states as

⁶⁹Can the UN Charter Be Amended, and How Many Times Has This Occurred?, DAG HAMMARSKJÖLD LIBRARY (20 July 2022), <https://ask.un.org/faq/140440> Accessed on 28 March 2025.

well as the responsibility that follows.⁷⁰ The participating nations and the UN needs are the basis for the abstention obligation, that concerns “decisions under Chapter VI, and under paragraph 3 of Article 52”, as well as disputes abstaining from voting according to paragraph 3 of Article 27.

A main point of discussion is to find and define the party of the dispute evolving in this way situation the abstention obligation mechanism. An exception for humanitarian functions is depended by the context.

Definitions for humanitarian purposes could be extrapolated from customary international law. In fact, customary international law makes use of definitions of international and non-international armed conflict provided from the Geneva Conventions in relation to the definition of the party and dispute terms.

The abstention obligation provided for by the Chapter VII of the resolution creates a situation for the nations that abstain from the voting system, by asking them to supply peacekeepers in a conflict that they are not a party. Such abstaining nations can be automatically excluded from any

⁷⁰U.N. Charter art. 108.

enforcement measures. The stipulations of the UN Charter require a consideration and cooperation providing armed forces, assistance and facilities.⁷¹

The abstention obligation of Chapter VI has demonstrated that the Security Council has the ability to adopt coercive measures against its members. The permanent members of the Security Council can exercise their veto vote in the cases that meet the criteria of Chapter VII regarding the use of force and when Chapter's VI measures have already failed. Russia in both Ukrainian territories as well as in Crimea has followed this attitude. Immediately after, it has rapidly initiated the armed conflict ignoring pacific settlement solutions as well as any actions from the Security Council (Schwartz, 2022).

The abstention obligation requires, in order to be more effective in war situations, some amendments of the UN Charter. This difficulty of amending the Charter is evident from the UN.

In fact, the UN had amended the Charter only five times

⁷¹Press Release, Security Council, Security Council Fails to Adopt Draft Resolution on Ending Ukraine Crisis, as Russian Federation Wields Veto, U.N. Press Release SC/14808 (25 February 2022).

from the beginning of its existence. Four of the five amendments have involved and increased the membership of various councils. The amendment of the UN Charter is based on Art. 108. The adoption of amendments requires a ratification of two thirds of the members of the General Assembly, two thirds of the members of the UN and the ratification of every permanent member of the Security Council.

The abstention obligation and the power of the permanent members of the Security Council renders impossible the amendment procedures. The United Kingdom and France have shown self-interested practices following a common position for the good of the international community.

This was the general trend that redefined state sovereignty and the necessity of an effective international legal order as a system that requires states to take effective enforcement measures.

The abstention obligation included in Chapter VII has improved the coercive power to the Security Council and the effectiveness of the international enforcement mechanisms.

CONCLUSIONS

The evolution of international law after the invasion of Russia in the territory of Ukraine was a reality. A continuous war that proliferated violence and a large number of violations were noted.

President Putin has followed a continuous propaganda in order to achieve its claims of genocide allegation in Ukraine at international level demonstrating at the same time the weakness of the international system to block its plans.

The enforcement at global stage seems to arrived to an end. The available mechanisms to do this led to the UN Security Council. The coercive power of the UN Security Council was the only arm of punishing violations at the international stage. The Council's present practice and structure prevents this to happen. Only with the expansion of the abstention obligation under the UN Charter must be achieved a prevention and punishment of international crimes.

Amendments, changes and concessions by the US and the permanent Security Council members can serve in the new international community and to an international order in

continuous evolution.

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